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ADDENDUM

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COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

SIGNIFICANT FORCE INCIDENT EVALUATION

ADDENDUM

UNIT: Compton Station
DATE: August 3, 2012, Friday
TIME: 2041 hours
LOCATION: [redacted] East Glencoe Street, Compton, CA. 90220
IAB#: FO2317769
URN#: 012-09676-2844-496

On September 10, 2013, the Executive Force Review Committee Chairperson Commander Stephen B. Johnson requested additional investigation on this case. He requested that the personnel who used the taser in this incident, Deputies William Lefevre, Ernest Celaya and [redacted] be re-interviewed regarding their taser training and knowledge of the Department's taser policy. He also requested that Sergeant Terrence Bell be interviewed regarding his approval of the deputies' reports in relation to the Department's taser policy. Additionally, being that Deputy Lefevre was on [redacted] and under the supervision of Deputy John Werner at the time of this incident, it was requested that Deputy Werner also be re-interviewed.

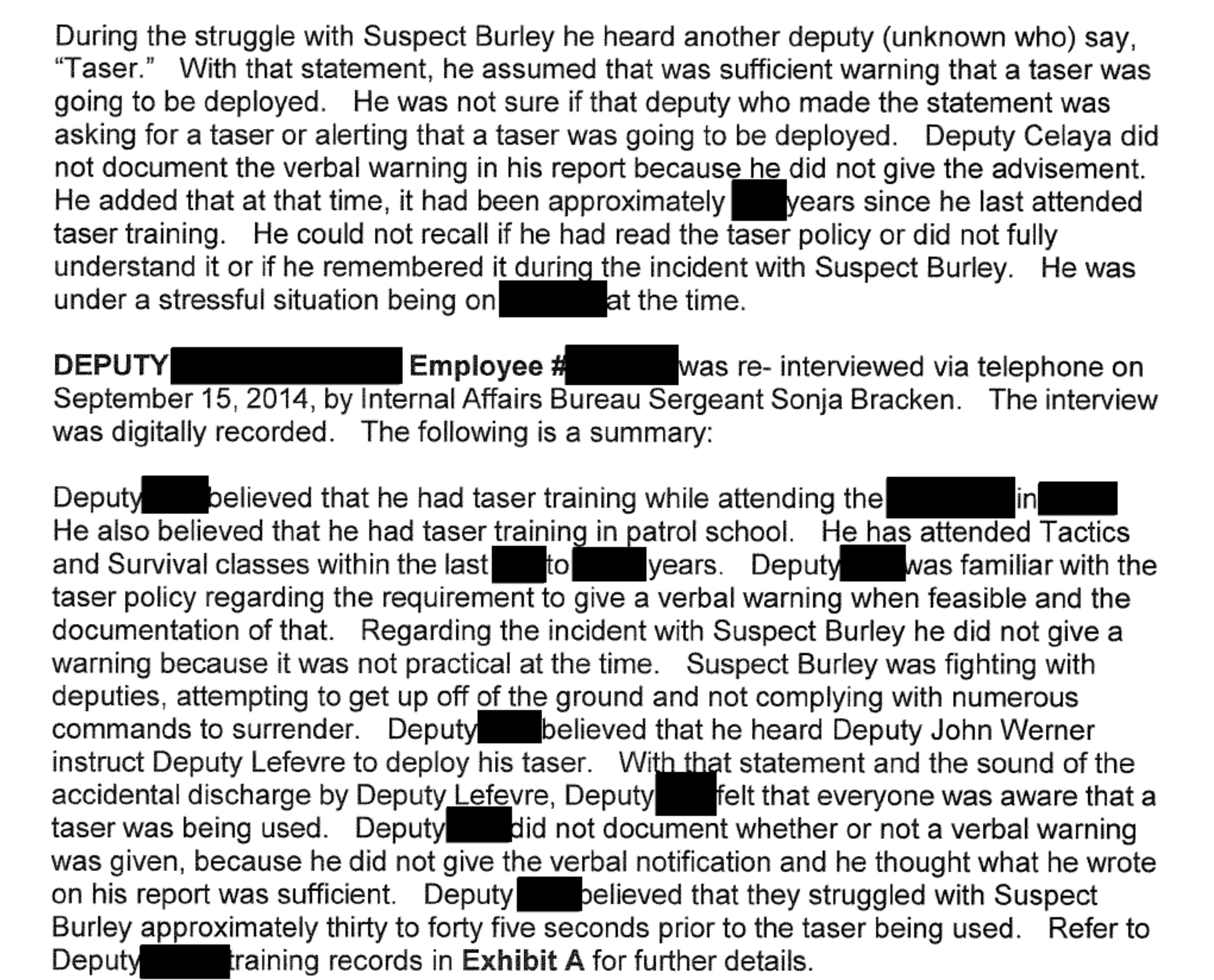
The following statements are summarized. Precise wording may be obtained by reviewing the digitally audio recorded interviews located in the IAB audio files and/or the verbatim transcripts listed under the ***Transcriptions*** *section of the addendum.*

INVOLVED EMPLOYEES STATEMENTS:

DEPUTY ERNEST CELAYA, Employee #[redacted] was re- interviewed via telephone on September 11, 2014, by Internal Affairs Bureau Sergeant Sonja Bracken. The interview was digitally recorded. The following is a summary:

Deputy Celaya had taser training while in [redacted] in [redacted] He believed that he had the training again sometime in [redacted] Both trainings are reflected in his training records which are submitted with this addendum in **Exhibit A.**

Deputy Celaya's understanding of the Department's taser policy in 2012 was when possible; it was required to give a verbal warning when a taser is going to be deployed. This verbal warning was to alert a suspect and other personnel of the taser deployment. In this incident on August 3, 2012, he did not give Suspect Burley a verbal warning.


During the struggle with Suspect Burley he heard another deputy (unknown who) say, "Taser." With that statement, he assumed that was sufficient warning that a taser was going to be deployed. He was not sure if that deputy who made the statement was asking for a taser or alerting that a taser was going to be deployed. Deputy Celaya did not document the verbal warning in his report because he did not give the advisement. He added that at that time, it had been approximately [redacted] years since he last attended taser training. He could not recall if he had read the taser policy or did not fully understand it or if he remembered it during the incident with Suspect Burley. He was under a stressful situation being on [redacted] at the time.

DEPUTY [redacted] Employee #[redacted] was re- interviewed via telephone on September 15, 2014, by Internal Affairs Bureau Sergeant Sonja Bracken. The interview was digitally recorded. The following is a summary:

Deputy [redacted] believed that he had taser training while attending the [redacted] in [redacted] He also believed that he had taser training in patrol school. He has attended Tactics and Survival classes within the last [redacted] to [redacted] years. Deputy [redacted] was familiar with the taser policy regarding the requirement to give a verbal warning when feasible and the documentation of that. Regarding the incident with Suspect Burley he did not give a warning because it was not practical at the time. Suspect Burley was fighting with deputies, attempting to get up off of the ground and not complying with numerous commands to surrender. Deputy [redacted] believed that he heard Deputy John Werner instruct Deputy Lefevre to deploy his taser. With that statement and the sound of the accidental discharge by Deputy Lefevre, Deputy [redacted] felt that everyone was aware that a taser was being used. Deputy [redacted] did not document whether or not a verbal warning was given, because he did not give the verbal notification and he thought what he wrote on his report was sufficient. Deputy [redacted] believed that they struggled with Suspect Burley approximately thirty to forty five seconds prior to the taser being used. Refer to Deputy [redacted] training records in **Exhibit A** for further details.

DEPUTY WILLIAM LEFEVRE, Employee #[redacted] was re-interviewed via telephone on September 15, 2014, by Internal Affairs Bureau Sergeant Sonja Bracken. The interview was digitally recorded. The following is a summary:

On the date of the incident with Suspect Burley, Deputy Lefevre was carrying a taser with a holster. Both items were inside the patrol car and not on his person. He did not have the taser with the holster connected to his gun belt because he did not have room on his belt. When he arrived at the scene, he retrieved that taser without the holster and placed it into his rear left pant pocket. No one trained him to carry the taser in that fashion. He recalled attending taser training in [redacted] of [redacted] as part of jail operations. He was taught to carry the taser in either an extended leg holster or a clip-on belt holster.

At the time of the incident with Suspect Burley, Deputy Lefevre's [redacted] was Deputy John Werner. Deputy Lefevre was not sure if Deputy Werner was aware of how he was carrying the taser in their patrol car that day. When they arrived on scene, Deputy Werner instructed him to retrieve the taser. During the actual encounter with Suspect Burley, Deputy Lefevre recalled hearing someone instruct him to tase Suspect Burley but he was not sure who that deputy was. Deputy Lefevre was familiar with the policy regarding giving a verbal warning prior to discharging a taser. He did not have an opportunity in this situation, as he accidentally tased himself upon drawing the taser from his rear pocket. Deputy Lefevre's intention was to warn Suspect Burley that he was going to get tased if he did not give up his right hand and stop fighting. Due to the close proximity of his partners that day, Deputy Lefevre was going to drive stun Suspect Burley. Deputy Lefevre did not recall hearing anyone else give Suspect Burley a verbal warning prior to discharging the taser. Refer to Deputy Lefevre's training records in **Exhibit A** for further details.

DEPUTY JOHN WERNER, Employee #[redacted] was re-interviewed via telephone on September 15, 2014, by Internal Affairs Bureau Sergeant Sonja Bracken. The interview was digitally recorded. The following is a summary:

On the date of this incident, Deputy Werner believed that his partner Deputy Lefevre was carrying a taser inside their patrol car. When they exited their patrol car, he recalled instructing Deputy Lefevre to retrieve the taser. He believed that Deputy Lefevre placed the taser in the small of his back as they went to assist with Suspect Burley. Deputy Werner had not instructed Deputy Lefevre or discussed with him the proper way to carry a taser. Deputy Lefevre believed that Deputy Lefevre has had taser training in academy, patrol school, while working in custody and while assigned to Compton Station.

Deputy Werner had taser training prior to this incident; he has attended the Department's Tactics and Survival training and as part of jail operations. He was familiar with the taser policy regarding the verbal warning. During the struggle with Suspect Burley, he instructed Deputy Lefevre to tase him. He heard Deputy Lefevre saying, "Taser, taser, take it out, take it out," as he accidentally tased himself. He did not remember hearing any further announcements about the taser after that. From the time he arrived on scene until the time Suspect Burley was tased, Deputy Werner believed that struggle with Suspect Burley lasted approximately forty five seconds to one minute. Refer to Deputy Werner's training records in **Exhibit A** for further details.

SERGEANT TERRENCE BELL, Employee #[redacted] was interviewed on September 22, 2014, by Internal Affairs Bureau Sergeants Sonja Bracken and Brenda Gibson. Sergeant Bell was represented by Venise Wallace of the Professional Peace Officers Association (POPA). The interview took place at Internal Affairs Bureau and was digitally recorded. The following is a summary:

Sergeant Bell's understanding of the taser policy at the time of the incident was that a verbal warning must be given that a taser is about to be deployed. If it is not feasible to give the warning, it must be documented in the incident report(s). Sergeant Bell confirmed that he approved all the incident reports for this incident. Upon reviewing and approving them, he did not assure that the involved deputies documented their reasons why they did not give a verbal warning. He was a newly promoted sergeant at the time of this incident and was eager to learn how to complete a supervisor's use of force incident. Knowing the policy, he believed that not assuring the proper verbiage regarding the taser warning was in their reports was a minor oversight on his part. Sergeant Bell hoped that this incident will serve as a good training issue and assured that this type of situation would not happen again. He was aware that as a supervisor he is supposed to be aware of policies and their revisions. Refer to Sergeant Bell's Employee Information System (assignment card) and training records in **Exhibit A** for further details.



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
SHARON J. MATSUMOTO • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

October 17, 2013

Captain Duane Harris
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #13-0613
L.A.S.D. File #012-09676-2844-054

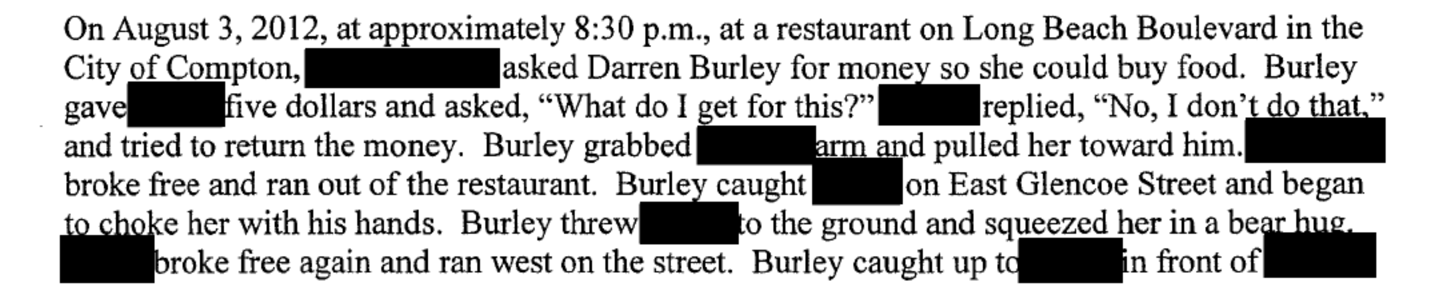
Dear Captain Harris:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 13, 2012, in-custody death of Darren Dwaine Burley, stemming from his arrest ten days earlier in the City of Compton. We have concluded that Los Angeles County Sheriff's Department (LASD) Deputies [redacted] David Aviles, [redacted] Paul Baserra, William Lefevre, Ernest Celaya and John Werner used legally justified force in subduing and arresting Burley.

The District Attorney Command Center was not notified at the time of Burley's arrest as it did not appear that Burley would likely expire and, therefore, the District Attorney Response Team did not respond to the location.

The following analysis is based upon investigative reports and witness statements taken during the investigation by the LASD and submitted to this office by Homicide Bureau Detective Gean Okada on September 10, 2013. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS



On August 3, 2012, at approximately 8:30 p.m., at a restaurant on Long Beach Boulevard in the City of Compton, [redacted] asked Darren Burley for money so she could buy food. Burley gave [redacted] five dollars and asked, "What do I get for this?" [redacted] replied, "No, I don't do that," and tried to return the money. Burley grabbed [redacted] arm and pulled her toward him. [redacted] broke free and ran out of the restaurant. Burley caught [redacted] on East Glencoe Street and began to choke her with his hands. Burley threw [redacted] to the ground and squeezed her in a bear hug. [redacted] broke free again and ran west on the street. Burley caught up to [redacted] in front of [redacted]

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East Glencoe Street. He grabbed her neck and punched her in the face. When [redacted] fell to the ground, Burley got on top of her and put her in a headlock. [redacted] started to lose consciousness.[1]

Residents in the area heard [redacted] yelling for help and called 9-1-1.[2] Deputies [redacted] and Aviles were the first to respond to the radio call of a male assaulting a pregnant female on the ground in the middle of the street. As soon as the deputies arrived, [redacted] broke free and ran away. The deputies saw Burley lying on his back on the ground. Individuals were lining both sides of the street; several were pointing at Burley.

Deputy Aviles stopped the patrol car about 15 feet from Burley, who stood up and faced the deputies. When the deputies exited the car, Aviles ordered Burley several times to get on his knees. Ignoring the orders, Burley walked toward Deputy [redacted] who was standing on the passenger side. Burley had his fists clenched to his sides, a blank stare and foam coming from his mouth. He was also breathing rapidly and grunting. [redacted] and Aviles ordered Burley to get on the ground. Burley ignored the orders, but stopped at the passenger side front bumper of the patrol car, continuing to grunt and growl. Burley then walked toward the driver side where Aviles was standing. He stopped about eight feet from Aviles and continued to growl with his fists clenched.

[redacted] emerged from a group standing nearby and yelled, "He tried to kill me!" Burley turned to face [redacted] and continued to growl. [redacted] ran west in the middle of the street. Burley began chasing her. Believing that Burley intended to injure [redacted] ran toward Burley and, using his left shoulder, collided into Burley's right side, causing Burley to fall forward into a parked truck. Burley's head hit the front grill area of the vehicle. [redacted] fell next to the driver's door, scraping his right knee.

With Burley lying face down, Aviles tried to control his hands to apply handcuffs. Burley immediately got up to his knees, grabbed Aviles' uniform shirt, pulled him closer and began punching him in the chest.[3] Aviles ordered Burley to "Get on the ground! Put your hands behind your back! Stop fighting!" Burley pulled Aviles' radio microphone from his uniform. Aviles punched Burley in the face about five times with both fists. The strikes had no effect as Burley continued to try to get to his feet and held onto the radio microphone. The deputies managed to push Burley face down on the ground. Burley maintained a hold on Aviles' uniform with his left hand and was pulling Aviles toward him. Burley's right arm was under his body. Burley ignored the deputies' orders to put his hands behind his back. Despite the deputies' efforts to use their body weight to keep him on the ground, Burley repeatedly pushed himself off the ground and kicked his feet. Burley continued to grunt and growl throughout the struggle. Burley tried to bite Aviles who yelled, "He's trying to bite me!" Burley's strength prevented the two deputies from controlling his movements.

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[1] When paramedics arrived [redacted] refused medical treatment, but complained of pain to her neck, back and face. She had slight redness on her neck. According to [redacted] driver's license, she was five feet tall and weighed 117 pounds.

[2] Witnesses heard [redacted] yelling, "Please let me go. I'm pregnant" and "I'm pregnant! What are you doing to me? Please don't kill me!"

[3] According to Burley's driver's license, he was 5'11" tall and weighed 180 pounds.

Deputies Celaya, [redacted] Lefevre, Werner and Baserra arrived to assist. Celaya placed his left knee on Burley's right ankle to stop him from kicking. Lefevre handed Celaya a taser. Celaya applied three taser activations in quick succession to Burley's right calf area without apparent effect. Celaya passed the taser to [redacted] who applied it to Burley's right rib area for two to three seconds, again without apparent effect. Baserra and Aviles gained control of Burley's left arm and put it behind his back. Baserra handcuffed his left hand. When [redacted] and [redacted] put Burley's right hand behind his back, Baserra secured the handcuffs. However, Burley continued to kick his feet, so Lefevre applied a hobble restraint. Despite being handcuffed and hobbled, Burley continued to grunt and thrash his body.

When paramedics arrived, Burley started to lose consciousness. Paramedics transported him to Long Beach Memorial Hospital where he was admitted to the Intensive Care Unit. Burley never regained consciousness and was declared brain dead in the hospital at 1:22 p.m., on August 13, 2012. On the date of the incident, a hospital urine toxicology screen showed the presence of cocaine, phencyclidine (PCP) and cannabinoids (marijuana) in his system.

Postmortem Examination

On August 21, 2012, Los Angeles County Deputy Medical Examiner Ajay Panchal performed a postmortem examination of Burley's remains and ascribed the cause of death to "sequelae of anoxic encephalopathy/cerebral edema with cardiopulmonary arrest (clinical)." Other conditions contributing but not related to the immediate cause of death were "superficial blunt head trauma; reported history of asthma; and hypertrophic heart disease with mild interstitial fibrosis." The manner of death was classified as "undetermined."

In a follow-up conversation, Dr. Panchal explained that Burley had an enlarged heart that was predisposed to arrhythmia or irregular heartbeat. The cocaine and PCP in his system further compromised the function of his heart. Burley's physical efforts while resisting arrest placed a significant strain on his heart causing it and his lungs to stop, resulting in a lack of oxygen to his brain and ultimately causing brain death. In Panchal's opinion, Burley's head injury from contacting the parked truck was not related to the immediate cause of death, though it was listed as a contributing condition.

LEGAL ANALYSIS

"An officer may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance." *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527 (internal quotations omitted). "Unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id.* (citations and internal quotations omitted). When protecting the public peace, a police officer "is entitled to the even greater use of force than might be in the same circumstances required for self-defense." *Id.*

In *Graham v. Conner* (1989) 490 U.S. 386, 396-397, the Court held that use of force cases are to be reviewed using an objective standard of the reasonable officer:

> "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [Citation.] . . . With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' [citation] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation."

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have existed. *Id.*

Tasers when used in dart-mode constitute an intermediate, significant level of force that must be justified by the governmental interest involved. *Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 826. However, use of a taser is subject to the same reasonableness test as the use of force generally. *See*, *Hinton v. City of Elwood* (10th Cir. 1993) 997 F.2d 774, 777 (not excessive for officers to use an "electrical stun gun" on a man after grabbing him and wrestling him to the ground, because of his active resistance to arrest).

Placing a person wearing handcuffs and leg restraints in a prone position is reasonable where the person had violently resisted arrest. *See*, *Mayard v. Hopkins* (8th Cir. 1977) 105 F.3d 1226; *Price v. County of San Deigo* (S.D. Cal. 1998) 990 F. Supp 1230.

CONCLUSION

The evidence examined in this investigation shows that Deputies [redacted] and Aviles responded to a radio call of a man assaulting a pregnant female in the street. When they arrived, Burley got up from the street and confronted the deputies with a combative posture. He appeared to be deranged and displayed obvious symptoms of being under the influence of drugs. Bystanders and [redacted] quickly confirmed that Burley was the subject of the assault call. The deputies acted reasonably in ordering Burley to the ground to detain him for an assault investigation. Burley, however, ignored the deputies' numerous orders and instead advanced toward them with clenched fists. When Burley started running after [redacted] it was abundantly clear to the deputies that Burley intended to physically harm her. In defense of [redacted] Deputy [redacted] used reasonable, non-lethal physical force in preventing Burley from chasing [redacted]

After Burley collided into the truck and was on the ground, numerous witnesses confirmed the deputies' accounts that Burley was violently resisting their attempts to arrest him. When Burley

grabbed Deputy Aviles' uniform shirt and microphone and began punching him, Aviles used reasonable force in punching Burley in the face to free himself. Burley increased the apparent danger to Aviles by trying to bite him. Burley had made it clear that he did not intend to submit to the deputies. With Burley fending off the attempts of several deputies to get his hands behind his back, Deputies Celaya and [redacted] used reasonable though apparently ineffective force in applying the taser to Burley's calf and rib areas. Ultimately, by using body weight and physical force, the deputies managed to handcuff Burley. When Burley continued to kick his legs after being handcuffed, Deputy Lefevre acted reasonably by applying the hobble restraint.

When [redacted] collided into Burley, Burley fell into the front of a truck, hitting his head on the grill. The medical examiner described the resulting injury as "superficial blunt head trauma." However, the coroner's report lists that injury as a condition "contributing but not related to the immediate cause of death." For the sake of clarity, assuming *arguendo* that Burley's head injury from colliding into the truck was an immediate cause of death, our determination that [redacted] use of force was legally justified would remain unchanged. As a deputy [redacted] was under a duty to act to protect [redacted] from Burley who was behaving irrationally and appeared intent on causing injury. Burley had ignored all verbal orders. Under the circumstances, his decision to use bodily force to prevent the attack on [redacted] was eminently reasonable. The evidence does not suggest that [redacted] was or should have been aware that the shoulder block would cause Burley's head to come in contact with the truck. Burley's head injury was clearly an unintended consequence of a reasonable application of non-lethal force in defense of another.

Given the rapidly evolving situation that confronted Deputies [redacted] David Aviles, [redacted] Paul Baserra, William Lefevre, Ernest Celaya and John Werner, we conclude that they used legally justified force in subduing and arresting Darren Burley. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

JASON P. LUSTIG
Deputy District Attorney

c: Deputy [redacted], Employee # [redacted]
Deputy David Aviles, Employee # [redacted]
Deputy [redacted] Employee # [redacted]
Deputy Paul Baserra, Employee # [redacted]
Deputy William Lefevre, Employee # [redacted]
Deputy Ernest Celaya, Employee # [redacted]
Deputy John Werner, Employee # [redacted]